

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2                                   **COMMISSIONERS**

3                                   JEFF HATCH-MILLER, Chairman  
4                                   WILLIAM A. MUNDELL  
5                                   MARC SPITZER  
6                                   MIKE GLEASON  
7                                   KRISTIN K. MAYES

In the matter of:	)	DOCKET NO. S-03593A-05-0000
	)	
MARK J. SHEEHY, CRD#2224709, and	)	DECISION NO. <u>67962</u>
JANE DOE SHEEHY, husband and wife,	)	
28432 N. 112 <sup>th</sup> Way	)	<b>ORDER TO CEASE AND DESIST, FOR</b>
Scottsdale, AZ 85262	)	<b>RESTITUTION, FOR ADMINISTRATIVE</b>
	)	<b>PENALTIES, AND OF REVOCATION</b>
Respondent.	)	<b>AGAINST RESPONDENT MARK J. SHEEHY</b>

11

12                   On April 15, 2005, the Securities Division (“Division”) of the Arizona Corporation

13 Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order

14 To Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for

15 Other Affirmative Action (“Notice”) of Opportunity for Hearing against Respondents MARK J.

16 SHEEHY (“SHEEHY”) and JANE DOE SHEEHY, subsequently identified as Terri A. Sheehy

17 (“RESPONDENTS”) alleging violations of the Arizona Securities Act (the “Act”). The Notice

18 specified that RESPONDENTS would be afforded an opportunity for an administrative hearing upon

19 written request filed with the Commission’s Docket Control within ten (10) days after receipt of the

20 Notice, in accordance with A.A.C. R14-4-306(B).

21

22                   SHEEHY was served by publication pursuant to A.A.C. Rule R14-4-303(H). Pursuant to

23 A.A.C. R14-4-303(H), the Division has published a statement regarding the administrative

24 proceedings at least once a week for four consecutive weeks in the “Arizona Business Gazette” on

25 April 21, 2005; April 28, 2005; May 5, 2005; and May 12, 2005. The “Arizona Business Gazette”

26

1 is published in Maricopa County, the county of SHEEHY's last known residence. Terri A. Sheehy  
2 was served by certified mail and requested a hearing.

3 Service of process of the Notice as to SHEEHY is complete. SHEEHY failed to request an  
4 administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. § 44-1972 and  
5 A.A.C. R14-4-306. SHEEHY failed to file an Answer within 30 days of service of the Notice,  
6 pursuant to A.A.C. R14-4-305. Upon information and belief, SHEEHY is not represented by  
7 counsel.

### 8 I.

#### 9 FINDINGS OF FACT

10  
11 1. SHEEHY was at all pertinent times a registered securities salesman in Arizona since  
12 February 3, 1992, CRD# 2224709. At all times pertinent to this action, SHEEHY was registered in  
13 Arizona in association with UBS Financial Services, Inc. f/k/a PaineWebber Inc. ("UBS") from  
14 October 1999 through April 2004; Morgan Stanley from April 2004 through December 2004; and  
15 Southwest Securities Inc. d/b/a First Financial Equity Corporation ("First Financial") from January  
16 2005 to February 4, 2005, when First Financial terminated SHEEHY. SHEEHY's registration was  
17 automatically suspended pursuant to A.R.S. § 44-1949.

18 2. From in or around January 2003 through January 2005, SHEEHY solicited  
19 \$87,034.00 from an unsophisticated retired nurse and homemaker for the purchase of stock in a  
20 real estate development company.

21 3. SHEEHY advised the client to invest her inheritance through him in a brokerage  
22 account, and assured her that he would assist her in purchasing conservative stocks to provide for  
23 her future needs. SHEEHY had his client sign account documents, including a margin agreement.

24 4. Beginning in or around January 2003, SHEEHY solicited his client to invest in  
25 stock in a real estate development company, representing the investment as a "sure thing," which  
26 would start paying dividends immediately.

1           5.       SHEEHY told his client that he was also investing his own money in the stock and  
2 was making the investment available to a select few of his clients.

3           6.       SHEEHY advised his client to transfer money from her brokerage account to her  
4 personal checking account and to write checks payable to SHEEHY to purchase stock in the real  
5 estate development company.

6           7.       SHEEHY conducted unauthorized transactions in his client's brokerage account to  
7 fund distributions to her in the amount of approximately \$3,400 per month, which he told her were  
8 "dividends" from the investment.

9           8.       In addition, from in or around January 2005, SHEEHY borrowed \$1150 from the  
10 client, in violation of his dealers' policies and procedures.

11          9.       In or around January 2005, after SHEEHY failed to repay the loan or to return the  
12 client's telephone calls, the client contacted SHEEHY's dealer, First Financial. First Financial  
13 conducted an investigation of the client's brokerage account with First Financial, UBS and Morgan  
14 Stanley and found no evidence of any real estate development investments, and further discovered  
15 that the client's withdrawals from her account for the purported real estate investment and the  
16 purported stock dividend distributions to the client were funded by unauthorized sales of stock and  
17 margin loans in the client's account.

18          10.      The client was not aware that she had incurred margin loan interest charges in the  
19 amount of approximately \$6,450.00 from the withdrawals from her brokerage account.

20          11.      SHEEHY misrepresented and/or failed to disclose the use of the client's investment  
21 funds.

22          12.      SHEEHY misrepresented and/or failed to disclose background or financial  
23 information about the purported development company or its principals.

24          13.      SHEEHY misrepresented the source of "returns" from the purported investment.

25          14.      SHEEHY failed to adequately disclose the risks of the purported investment.

26          15.      SHEEHY engaged in unauthorized transactions in the client's account.

16. SHEEHY engaged in dishonest or unethical practices by borrowing money from a customer, who was not a relative of SHEEHY or a person in the business of lending funds and by selling securities that were not recorded on the records of the dealer with whom he was registered at the time of the transactions.

## II.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. SHEEHY offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. SHEEHY violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

4. SHEEHY's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032 and 44-1962.

5. SHEEHY's conduct is a violation of A.R.S. § 44-1991 and grounds for a restitution order pursuant to A.R.S. §§ 44-2032 and 44-1962.

6. SHEEHY's conduct is grounds for administrative penalties under A.R.S. §§ 44-2036 and 44-1962.

7. SHEEHY's conduct is grounds to revoke SHEEHY's registration as a securities salesman with the Commission pursuant to A.R.S. § 44-1962.

• • •

• • •

• • •

• • •

**III.****ORDER**

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that SHEEHY, his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act. Respondent shall not sell any securities in or from Arizona without being registered in Arizona as dealers or salesmen, or exempt from such registration. Respondent shall not sell securities in or from Arizona unless the securities are registered in Arizona or exempt from registration. Respondent shall not transact business in Arizona as an investment adviser or an investment adviser representative unless licensed in Arizona or exempt from licensure.

IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-1962, that SHEEHY shall pay restitution to investors shown on the records of the Commission in the amount of \$94,634, plus interest at the rate of 10% per annum from the date of this Order. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney General is unable to disburse shall be transferred to the general fund of the state of Arizona. If Respondent does not comply with this order of restitution, any outstanding balance shall be in default and shall be immediately due and payable.

IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-1962, that SHEEHY shall pay administrative penalties in the amount of \$20,000. Payment shall be made in full by cashier's check or money order on the date of this Order, payable to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full.

1 IT IS FURTHER ORDERED that SHEEHY's registration as a securities salesman is revoked  
2 pursuant to A.R.S. § 44-1962.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

5  
6  
7 /s/ Jeffrey Hatch-Miller  
CHAIRMAN

COMMISSIONER

8  
9 Marc Spitzer  
COMMISSIONER

Lowell S. Gleason  
COMMISSIONER

Kristin Mayes  
COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C.  
12 McNEIL, Executive Secretary of the Arizona  
13 Corporation Commission, have hereunto set my  
14 hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the  
16 City of Phoenix, this 11th day of  
17 July, 2005.

18 /s/ Brian C. McNeil  
BRIAN C. McNEIL  
Executive Secretary

19  
20 \_\_\_\_\_  
DISSENT

21  
22 \_\_\_\_\_  
DISSENT

23  
24 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant  
25 to the Executive Secretary, voice phone number 602-542-3931, E-mail lhogan@azcc.gov

26 (ptj)